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Michael L. Short v. Samuel Smith : Brief of Appellant

Utah Supreme Court

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Vernon Romney; Attorney General; Attorney for Respondent.

Stephen R. McCaughey; Salt Lake Legal Defender Association; Attorney for Appellant.

Recommended Citation

Brief of Appellant, *Short v. Smith*, No. 14393.00 (Utah Supreme Court, 2001).

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BRIGHAM YOUNG UNIVERSITY
Utah State Law School

IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL L. SHORT,
Plaintiff-Appellant

vs.

SAMUEL SMITH, Warden
Utah State Prison,

Defendant-Respondent

Case No. 14393

BRIEF OF APPELLANT

Appeal from a petition for a Writ of Habeas Corpus
in the Third Judicial District Court of Salt Lake County, State of
Utah on the 14th day of December, 1975 the Honorable Marcellus
K. Snow presiding.

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Attorney for Respondent

FILED

MAR 22 1976

IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL L. SHORT	:	
	:	
Plaintiff-Appellant	:	
	:	
vs.	:	
	:	
SAMUEL SMITH, Warden	:	Case No. 14393
Utah State Prison,	:	
	:	
Defendant-Respondent	:	

STATEMENT OF THE NATURE
OF THE CASE

The appellant appeals from a denial of a petition for a Writ of Habeas Corpus by the Honorable Marcellus K. Snow in the Third Judicial District, Salt Lake County, State of Utah on the 14th day of December, 1975.

DISPOSITION IN THE LOWER COURT

Petition for a Writ of Habeas Corpus was denied.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the District Courts decision and release from custody.

STATEMENT OF FACTS

On March 20, 1975 appellant was committed to the Utah State Prison for the term of not more than five years for the crime of forgery of which a jury had found him guilty. Appellant did not appeal from this sentence but filed a petition for a writ of habeas corpus based on the allegation that he was illegally incarcerated because at preliminary hearing the complaint charged

him with attempting to utter . . . a writing purporting to be the act of another-and when he was arraigned in District urt amended the information to read "did utter an altered writing" . . . Appellant contends that he was originally charged with an "attempt to utter" which was a Class A misdemeanor and not a third degree felony and thus should be sentenced to one year instead of not more than five years.

ARGUMENT

Appellant's attorney on this appeal, who was also attorney at trial has carefully reviewed the record in this matter and his trial notes and has concluded that there are no meritorious arguments to be made.

Respectfully submitted,

STEPHEN R. McCAUGHEY
Attorney for Appellant